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*Attorneys for Bozeman Deaconess Health Services*

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
GREAT FALLS DIVISION

AUDREY TURNER, VICKY BYRD,	)	CV-17-141-BMM
JENNIFER TANNER, LINDA	)	
LARSEN, PAUL LEE, BRANDI	)	
BRETH, KATE HOULIHAN and BARB	)	
MOSER,	)	<b>BOZEMAN HEALTH'S</b>
Plaintiffs,	)	<b>ANSWER TO SECOND</b>
v.	)	<b>AMENDED COMPLAINT,</b>
	)	<b>AFFIRMATIVE DEFENSES,</b>
	)	<b>AND JURY DEMAND</b>
NORTHERN MONTANA HOSPITAL,	)	
a Montana Nonprofit Corporation, ST.	)	
PETER'S HOSPITAL, a Montana	)	
Nonprofit Corporation, BOZEMAN	)	
DEACONESS HEALTH SERVICES, a	)	
Montana Nonprofit Corporation, RCHP	)	
BILLINGS-MISSOULA, LLC, a	)	
Delaware Limited Liability Company,	)	
CMC MISSOULA, INC., a Montana	)	
Nonprofit Corporation, and BILLINGS	)	
CLINIC, a Montana Nonprofit	)	
Corporation,	)	
Defendants.	)	

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Defendant Bozeman Deaconess Health Services (“Bozeman Health”) hereby responds to Plaintiffs’ Second Amended Complaint as follows:

The introductory paragraph in Plaintiffs’ Second Amended Complaint includes legal conclusions to which a response is not required. To the extent a response is required, the allegations are denied.

1. Lacks sufficient knowledge to form a belief as to the truth of the allegations in paragraph 1 and therefore denies the same.

2. Lacks sufficient knowledge to form a belief as to the truth of the allegations in paragraph 2 and therefore denies the same.

3. Lacks sufficient knowledge to form a belief as to the truth of the allegations in paragraph 3 and therefore denies the same.

4. Admits Ms. Larsen was an employee at Bozeman Health Deaconess Hospital from 2012 through 2017 and that she was a participant in the Bozeman Deaconess Health Services Group Comprehensive Medical Benefit, a/k/a the Bozeman Deaconess Health Services Medical Plan (“Bozeman Health’s employee group health plan”). Lacks sufficient knowledge to form a belief as to the truth of the remaining allegations in paragraph 4 and therefore denies the same.

5. Lacks sufficient knowledge to form a belief as to the truth of the allegations in paragraph 5 and therefore denies the same.

6. Lacks sufficient knowledge to form a belief as to the truth of the allegations in paragraph 6 and therefore denies the same.

7. Lacks sufficient knowledge to form a belief as to the truth of the allegations in paragraph 7 and therefore denies the same.

8. Lacks sufficient knowledge to form a belief as to the truth of the allegations in paragraph 8 and therefore denies the same.

9. Lacks sufficient knowledge to form a belief as to the truth of the allegations in paragraph 9 and therefore denies the same.

10. Lacks sufficient knowledge to form a belief as to the truth of the allegations in paragraph 10 and therefore denies the same.

11. Admits Bozeman Health is a nonprofit public benefit corporation that operates a hospital in Gallatin County, Montana.

12. Lacks sufficient knowledge to form a belief as to the truth of the allegations in paragraph 12 and therefore denies the same.

13. Lacks sufficient knowledge to form a belief as to the truth of the allegations in paragraph 13 and therefore denies the same.

14. Lacks sufficient knowledge to form a belief as to the truth of the allegations in paragraph 14 and therefore denies the same.

15. Lacks sufficient knowledge to form a belief as to the truth of the allegations in paragraph 15 and therefore denies the same.

16. Admits the allegations in paragraph 16 to the extent they are directed to Bozeman Health. To the extent the allegations in paragraph 16 refer to other Defendants, Bozeman Health lacks sufficient knowledge to form a belief as to the truth of the allegations and therefore denies the same.

17. Lacks sufficient knowledge to form a belief as to the truth of the allegations in paragraph 17 and therefore denies the same.

18. The allegations in paragraph 18 are legal conclusions to which no response is required. To the extent a response is required from Bozeman Health, the allegations are denied.

19. The allegations in paragraph 19 are legal conclusions to which no response is required. To the extent a response is required from Bozeman Health, the allegations are denied.

20. The allegations in paragraph 20 are legal conclusions to which no response is required. To the extent a response is required from Bozeman Health, the allegations are denied.

21. The allegations in paragraph 21 are legal conclusions to which no response is required. To the extent a response is required from Bozeman Health, the allegations are denied.

22. The allegations in paragraph 22 are legal conclusions to which no response is required. To the extent a response is required from Bozeman Health, the allegations are denied.

23. Denies the allegations in paragraph 23.

24. Denies the allegations in paragraph 24.

25. On information and belief, admits that BCBSMT, among other things, provides health insurance coverage and/or third party administrative services to employers that sponsor employee health benefit plans.

26. Denies the allegations in paragraph 26.

27. Denies the allegations in paragraph 27.

28. Denies the allegations in paragraph 28.

29. Denies the allegations in paragraph 29.

30. Denies the allegations in paragraph 30.

31. Denies the allegations in paragraph 31.

32. Lacks sufficient knowledge to form a belief as to the truth of the allegations in paragraph 32 and therefore denies the same.

33. Lacks sufficient knowledge to form a belief as to the truth of the allegations in paragraph 33 and therefore denies the same.

34. Lacks sufficient knowledge to form a belief as to the truth of the allegations in paragraph 34 and therefore denies the same.

35. Lacks sufficient knowledge to form a belief as to the truth of the allegations in paragraph 35 and therefore denies the same.

36. Denies the allegations in paragraph 36.

37. Lacks sufficient knowledge to form a belief as to the truth of the allegations in paragraph 37 and therefore denies the same.

38. Lacks sufficient knowledge to form a belief as to the truth of the allegations in paragraph 38 and therefore denies the same.

39. Lacks sufficient knowledge to form a belief as to the truth of the allegations in paragraph 39 and therefore denies the same.

40. Denies the allegations in paragraph 40.

41. The allegations in paragraph 41 are legal conclusions to which no response is required. To the extent a response is required from Bozeman Health, the allegations are denied.

42. Denies the allegations in paragraph 42.

43. Denies the allegations in paragraph 43.

- 44. Denies the allegations in paragraph 44.
- 45. Denies the allegations in paragraph 45.
- 46. Denies the allegations in paragraph 46.
- 47. Denies the allegations in paragraph 47.
- 48. Denies the allegations in paragraph 48.
- 49. Bozeman Health restates its responses to the preceding paragraphs.
- 50. The allegations in paragraph 50 are legal conclusions to which no response is required. To the extent a response is required, the allegations are denied.
- 51. Denies the allegations in paragraph 51.
- 52. Denies the allegations in paragraph 52.
- 53. Lacks sufficient knowledge to form a belief as to determine what information Plaintiffs have and therefore denies the allegations in paragraph 53.
- 54. Denies the allegations in paragraph 54.
- 55. Denies the allegations in paragraph 55.
- 56. Denies the allegations in paragraph 56.
- 57. Denies the allegations in paragraph 57.
- 58. Denies the allegations in paragraph 58.
- 59. Denies the allegations in paragraph 59.

60. The allegations in paragraph 60 are legal conclusions to which no response is required. To the extent a response is required, the allegations are denied.

61. Denies the allegations in paragraph 61.

62. Bozeman Health restates its responses to the preceding paragraphs.

63. The allegations in paragraph 63 are legal conclusions to which no response is required. To the extent a response is required, the allegations are denied.

64. The allegations in paragraph 64 are legal conclusions to which no response is required. To the extent a response is required, the allegations are denied.

65. The allegations in paragraph 65 are legal conclusions to which no response is required. To the extent a response is required, the allegations are denied.

66. Denies the allegations in paragraph 66.

67. Denies the allegations in paragraph 67.

68. Denies the allegations in paragraph 68.



69. The allegations in paragraph 69 are legal conclusions to which no response is required. To the extent a response is required, the allegations are denied.

70. Denies the allegations in paragraph 70.

71. Denies the allegations in paragraph 71.

72. Denies the allegations in paragraph 72.

73. Denies each and every allegation not specifically admitted herein.

### **AFFIRMATIVE DEFENSES**

1. Plaintiffs' Second Amended Complaint fails to state a claim upon which relief can be granted.

2. Plaintiffs lack standing and have not suffered any damages or alleged any specific claim for damages.

3. Plaintiffs' claims, or some of them, are barred by the statute of limitations.

4. Plaintiffs, at all times relevant, have been able to access all public ERISA financial disclosures with respect to Bozeman Health's employee group health plan.

5. Plaintiffs' claims, or some of them, are barred by privacy and confidentiality considerations under Montana law.

6. Plan fiduciaries of Bozeman Health's employee group health plan have broad discretionary authority to manage plan assets and there was no abuse of discretion.

7. Bozeman Health's employee group health plan fiduciaries complied with all fiduciary duties set forth in ERISA §404(a)(1), 29 U.S.C. § 1104(a)(1), including but not limited to:

- (a) *the duty of undivided loyalty*: to discharge duties solely in the interests of participants and beneficiaries;
- (b) *the exclusive benefit rule*: for the exclusive purpose of providing benefits to participants and their beneficiaries and for defraying reasonable expenses of administering the plan;
- (c) *the prudent expert rule*: with care, skill, prudence, and diligence that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims; and,
- (d) *the plan document rule*: in accordance with the documents and instruments governing the plan insofar as those documents and instruments are consistent with ERISA.

8. Bozeman Health acted reasonably and in accordance with judicial decisions and oversight through the prior anti-trust action.

9. Plaintiffs cannot assert a non-judiciable case to conduct discovery to search for a cause of action.

10. Plaintiffs' claims are subject to dismissal for failure to timely assert and/or exhaust available administrative and appeal remedies.

11. Plaintiffs' claims are barred by the futility doctrine.

12. Bozeman Health's employee group health plan fiduciaries complied with all applicable aspects of ERISA or complied with an ERISA exemption or exception, including provisions of ERISA § 408, 29 U.S.C. § 1108.

**BOZEMAN HEALTH DEMANDS TRIAL BY JURY**  
**ON ALL ISSUES SO TRIABLE, IF ANY**

WHEREFORE, Defendant Bozeman Health respectfully requests that this action be dismissed with prejudice, that judgment be entered in favor of Bozeman Health, along with an award of attorneys' fees and costs, and that the Court grant such other relief as it deems appropriate.

DATED this 7<sup>th</sup> day of August, 2018.

By /s/ Ian McIntosh  
Ian McIntosh  
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Attorneys for Bozeman Health

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the foregoing document was served upon the following counsel of record by the means designated below this 7th day of August, 2018.

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/s/ Ian McIntosh  
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